PANDORA PETROLEUM CO.

IBLA 82-1291

Decided July 13, 1983

Appeal from decision of Utah State Office, Bureau of Land Management, dismissing protest against first-drawn simultaneous oil and gas lease application. U-50706.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly signed, in terms of indicating the relationship of the signatory and the applicant, as required by 43 CFR 3112.2-1(b), where the applicant is a partnership and the signatory is a partner authorized to act in its behalf, and the application is noted with a reference to the BLM serial number where the articles of partnership and the names of those authorized to act are on file.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A simultaneous oil and gas lease application is properly filed by a partnership, in accordance with 43 CFR 3102.2-4 (1981), requiring the filing of statements of partnership qualifications, where the application is noted with a reference to the BLM serial number where the statements are on file, even though the application is dated prior to receipt by BLM, approval of, and assignment of a serial number for those statements.

74 IBLA 173

3. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

A first-drawn application in a simultaneous oil and gas lease drawing must be rejected where the applicant has not complied with 43 CFR 3102.2-6 (1981), requiring disclosure of any agreement with the lease filing service which assisted the applicant.

Fred M. Garrett, 66 IBLA 49 (1982), and Monty Cranston, 67 IBLA 364 (1982), overruled to extent inconsistent.

APPEARANCES: R. Hugo C. Cotter, Esq., Albuquerque, New Mexico, for appellant; Kenneth L. Salazar, Esq., Denver, Colorado, for Indus.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The Pandora Petroleum Company has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated August 26, 1982, dismissing its protest against the simultaneous oil and gas application, U-50706, of Indus, a New York partnership, drawn with first priority for parcel UT-138 in the January 1982 simultaneous oil and gas lease drawing. Appellant's application was drawn with second priority.

On April 9, 1982, appellant protested the simultaneous oil and gas lease application of Indus, contending that the application was not properly signed. Appellant stated that if "Indus" is an individual, the application was not holographically signed, but, rather, bore an "illegible signature." Appellant further stated that if "Indus" was a business entity, the signature on the application was not effective as a "binding signature" where the person signing did not show "his or her authorized representative capacity and position with 'Indus." Appellant also concluded that the application was not properly completed because the "certificates" in paragraphs (e) and (f) on the back of the application are "those of the signer and not the applicant 'Indus." Finally, appellant stated that Indus had "not complied with 43 CFR 3102.2-1 and 3102.2-6."

In its August 1982 decision, BLM concluded that the application of Indus had been properly signed. BLM stated that the application

filed in the name of Indus is holographically signed in ink by hand in the space marked "Applicant's Signature." The signature is sufficiently legible to be read "Dennis R. Tollini" and

74 IBLA 174

compares with the signature specimen contained in the properly referenced qualification file, BLM Serial No. W-56800, wherein Dennis R. Tollini is authorized to sign such applications for Indus, a qualified partnership approved by the Wyoming BLM State Office effective January 6, 1982.

With respect to the charge that the application was not properly completed, BLM stated, "Inasmuch as the application was filed in the name of Indus, a qualified partnership, and signed by Dennis R. Tollini as an authorized partner, the certification in paragraphs (e) through (f) are considered those of the partnership and not the individual." With respect to the charge that Indus had not complied with 43 CFR 3102.2-1, BLM stated that, "compliance with 43 CFR 3102.2-1 was met when the authorized BLM Serial No. W-56800 was inserted properly on the application." Finally, with respect to the charge that Indus had not complied with 43 CFR 3102.2-6, BLM concluded that Indus had complied with 43 CFR 3102.2-6(b) because the agent which filed its application, Energy Filing Corporation (Energy Filing), had submitted the required documents "under date of January 25, 1982."

In its statement of reasons for appeal, appellant contends that the application of Indus was not properly signed in accordance with 43 CFR 3112.2-1(b), because, even if Dennis R. Tollini was authorized to sign on behalf of Indus, the application was not rendered "in a manner to reveal the name of the applicant, the name of the signatory and their relationship." Appellant also argues that Indus did not comply with 43 CFR 3102.2-1(c), in terms of referencing its statements of partnership qualifications by serial number, because the qualifications were approved effective January 6, 1982, "two (2) days after the Indus application was signed on January 4, 1982." (Emphasis in original.)

On September 30, 1982, Indus filed an answer to appellant's statement of reasons. Indus argues that it complied with 43 CFR 3112.2-1(b) because:

First, the Application sets forth the name of the Applicant, Indus, and the name of the signatory, Dennis R. Tollini. Second, the relationship between Indus and Dennis R. Tollini is revealed by Indus's qualifications file serial No. W-56800, which number appears on the same side of the Application as Dennis R. Tollini's signature.

Indus cites the case of Hercules (A Partnership), 67 IBLA 151 (1982), appeal filed sub nom. Grooms v. Watt, Civ. No. 82-2179 (D. Colo. filed Dec. 17, 1982), in support. Indus also argues that it complied with 43 CFR 3102.2-1(c) because its statements of partnership qualifications were on file "in BLM Serial No. W-56800 long before January 4, 1982, the date on which Dennis R. Tollini signed the Application for Indus," and that the documents were effective to establish Tollini's authority to sign the application even without BLM approval. Indus states that such approval relates to its ultimate ability to hold an interest in a Federal oil and gas lease and not to Tollini's authority to sign a simultaneous oil and gas lease application.

Appellant contends in its response that Indus did not comply with 43 CFR 3102.2-1(c) because on January 4, 1982, when the application was signed, the statements of partnership qualifications were not on file, as Indus maintains. These documents were not received by BLM until January 6, 1982, and appellant asserts that this fact distinguishes this case from Hercules (A Partnership), supra. Appellant admits that 43 CFR 3102.2-1(c) does not require BLM approval of the partnership qualifications prior to filing a simultaneous oil and gas lease application, but concludes that the reference by serial number on Indus' application was "premature and without effect" and that Indus was required to comply with 43 CFR 3102.2-4(a) and (b), which it has not done.

In response, Indus states that its statements of partnership qualifications were received by BLM "at least by January 6, 1982" and approved on January 11, 1982. Indus concludes that when its application was filed "on or about January 22, 1982," the statements of partnership qualifications were on file and reference to the appropriate serial number was made on the application, in compliance with 43 CFR 3102.2-1(c).

[1] The first question to be decided is whether the application of Indus was properly signed in accordance with 43 CFR 3112.2-1(b). 43 CFR 3112.2-1(b) provides in relevant part that, "Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship." In Hercules (A Partnership), supra, we considered the question of whether a partnership had complied with 43 CFR 3112.2-1(b) where the individual signing the application did not identify himself in the required manner, but where the application referred to a qualifications file, which indicated that the individual was a general partner who was individually authorized to act on behalf of the partnership. We concluded that in such a situation there was compliance. See also Dry River Properties, 69 IBLA 151 (1982). This conclusion is equally applicable herein. The application of Indus was signed by Dennis R. Tollini and specifically referenced qualifications file W-56800. At the time the application was filed, qualifications file W-56800 contained the statements of partnership qualifications for Indus, which indicated that Tollini was a general partner and that all of the general partners were authorized to act on behalf of the partnership with respect to oil and gas leases and interests therein.

The fact that the application of Indus was signed prior to the filing of the statements of partnership qualifications does not affect our conclusion that there has been compliance with 43 CFR 3112.2-1(b). The application, when filed, was rendered in the appropriate manner where it bore a reference to qualifications file W-56800, which contained the requisite information. The significance which we attach to the date on the application is to indicate whether the application was signed within the filing period, as required by 43 CFR 3112.2-1(c). See George W. Lewis, Jr., 71 IBLA 231 (1983). The application of Indus was signed and filed within the January 1982 filing period which ended January 22.

The record indicates that the statements of partnership qualifications for Indus and other partnerships were filed with BLM on January 6, 1982. The statements were officially accepted by BLM, by letter dated January 11, 1982, and placed in qualifications file W-56800. The application of Indus, which was signed prior to receipt and acceptance of the statements, states that the documents were "previously" filed in W-56800. It thus appears to us that the qualifications file number was placed on the application after it was signed, but prior to submission of the applications. Appellant, while suggesting otherwise, has presented no proof to establish that this was not the case.

[2] The next question to be decided is whether Indus complied with 43 CFR 3102.2-1(c) (1981). 43 CFR 3102.2-1(c) provides for the filing of various statements, including statements of partnership qualifications required by 43 CFR 3102.2-4 (1981), for future reference. 43 CFR 3102.2-4 requires in part that a partnership submit with its simultaneous oil and gas lease application various documents relating to its qualifications to hold Federal oil and gas leases, including a "complete list of all general partners * * * identifying those authorized to act on behalf of the * * * partnership in matters relating to Federal oil and gas leasing." 1/ 43 CFR 3102.2-1(c) provides an alternative method of complying with the filing requirement whereby a partnership may place the required documents on file with BLM and make reference to them by assigned serial number in future filings, "in lieu of resubmitting the statement."

We can discern no violation of 43 CFR 3102.2-1(c) where the application, when filed, bore a reference to the appropriate qualifications file, which was in existence at that time. 43 CFR 3102.2-1(c) requires nothing more. James W. Lacy, 69 IBLA 285 (1982); KVK Partnership, 69 IBLA 199 (1982).

[3] Having reviewed the record, we consider the critical question in this appeal to be whether Indus complied with 43 CFR 3102.2-6 when it filed its simultaneous oil and gas lease application. That regulation requires disclosure of any agreement or understanding with an agent where the applicant received the assistance of that agent in connection with the simultaneous filing, and the agent is in the business of providing such assistance. 2/

^{1/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the partnership qualifications found in 43 CFR 3102.2-4. 47 FR 8544 (Feb. 26, 1982). In the absence of countervailing public policy reasons or intervening rights, this Board may apply an amended version of a regulation to a pending matter where it benefits the affected party to do so. See James E. Strong, 45 IBLA 386 (1980); Wilfred Plomis, 34 IBLA 222, 228 (1978); Henry Offe, 64 I.D. 52, 55-56 (1957). In this case, however, it is not possible to do so because of the intervening rights of the second- and third-priority applicants.

^{2/} On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the agent qualifications found in 43 CFR 3102.2-6. 47 FR 8544 (Feb. 26, 1982). However, as in the case of partnership qualifications (see note 1), the Board may not apply the amended version of the regulation because of the intervening rights of the second and third priority applicants.

There are three alternative methods of complying with the requirement that an applicant notify BLM of any agreement or understanding with an agent. Arthur H. Kuether, 65 IBLA 184 (1982). Under 43 CFR 3102.2-6(a), an applicant is required to submit with his lease application "a personally signed statement as to any understanding, or a personally signed copy of any written agreement." In the alternative, under 43 CFR 3102.2-6(b), an applicant may submit with his lease application a uniform agreement entered into between several applicants and an agent. In addition, a list of those participating under the agreement must be filed within 15 days from the filing of the application. 3/ Finally, under 43 CFR 3102.2-1(c), an applicant may place evidence of agency qualifications on file and make reference in future simultaneous filings, by assigned serial number, to such evidence.

In its August 1982 decision, BLM concluded that Indus had complied with 43 CFR 3102.2-6 because its agent, Energy Filing, had submitted the documents required by subsection (b) "under date of January 25, 1982." The record indicates that these documents, i.e., a blank service agreement, a blank subscription agreement, a blank limited agency agreement and a list of participating clients, were received by BLM on January 27, 1982. We conclude that these documents were, therefore, not submitted with the simultaneous oil and gas lease application of Indus, which is deemed to have been received on January 22, 1982, the end of the filing period. Furthermore, there is no evidence that Indus or its agent complied with either 43 CFR 3102.2-6(a) or 43 CFR 3102.2-1(c). Accordingly, since Indus failed to comply with 43 CFR 3102.2-6, BLM should have rejected Indus' application, in accordance with 43 CFR 3112.6-1(b). Westates Group No. 8, 69 IBLA 186 (1982); Mrs. G. C. Fajardo, 69 IBLA 70 (1982).

^{3/} On two occasions the Board, in applying the requirement that the list of names and addresses of an agent's clients be filed within 15 days, has indicated that filing of the uniform agreement within 15 days is sufficient. Monty Cranston, 67 IBLA 364 (1982); Fred M. Garrett, 66 IBLA 42 (1982). To the extent these cases purport to allow the filing of a copy of the uniform agreement (as opposed to a list of client's names and addresses) within 15 days of the close of the filing period, they are inconsistent with the interpretation of the regulation in Arthur H. Kuether, supra, which has been followed in numerous cases. E.g., Patricia C. Alker, 67 IBLA 214 (1982); Raymond K. Steitz, 67 IBLA 173 (1982); Richard R. Rhyner, 65 IBLA 141 (1982); Robert B. Amdahl, 62 IBLA 246 (1982). We believe that Arthur H. Kuether, supra, which requires that a copy of the uniform agreement be filed with the application, embraces a proper reading of the requirement of the regulation at 43 CFR 3102.2-6(b) (1981) and, Fred M. Garrett, supra, and Monty Cranston, supra, are overruled to the extent inconsistent.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier Administrative Judge

We concur:

James L. Burski Administrative Judge

C. Randall Grant, Jr. Administrative Judge

74 IBLA 179